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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Cheryl E. Zemont

DOCKET NO.: 0502.003

SERIAL NO.: 10/612,521

EXAMINER: Michael A. Brown

FILED: July 2, 2003

ART UNIT: 3764

TITLE: HEALTHY BODY BALL

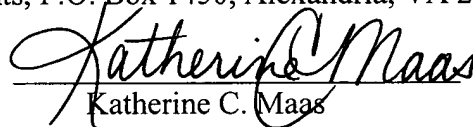
Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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CERTIFICATE OF MAILING

I hereby certify that on this 28th day of April, 2006, this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By:


Katherine C. Maas

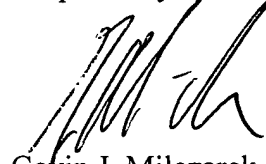
TRANSMITTAL OF BRIEF ON APPEAL

Dear Sir:

Pursuant to the provisions of 37 C.F.R. 1.192, the appellant is hereby submitting three (3) copies of a Brief on Appeal in the above-captioned patent application.

Please charge the \$250.00 appeal brief filing fee required by 37 C.F.R. 1.17(c), and any other cost or credit any overpayment associated with the filing of this Brief on Appeal, to our Deposit Account No. 17-0055.

Respectfully submitted,



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THE UNITED STATES PATENT AND TRADEMARK OFFICE

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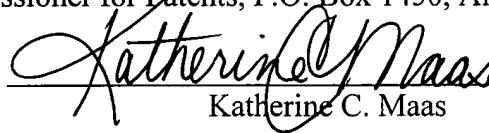
TITLE: Healthy Body Ball

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Katherine C. Maas

TO THE COMMISSIONER FOR PATENTS

BRIEF ON APPEAL

Dear Sir:

This is an appeal from the final rejection dated 01/09/06 from Examiner Michael Brown regarding Application Serial No. 10/612,521 entitled "Healthy Body Ball," filed on July 02, 2003.

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REAL PARTY IN INTEREST

The real party in interest is the inventor, Cheryl E. Zemont.

RELATED APPEALS AND INTERFERENCES

No related appeals or interferences are currently pending.

STATUS OF CLAIMS

Claims 3, 6-12, 15, 18, 19, and 22 have been cancelled. Thus, claims 1, 2, 4, 5, 13, 14, 16, 17, 20 and 21 currently stand rejected and are on appeal.

STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is an independent claim directed to a method for performing a trigger-point massage (page 10, lines 4-10), including the steps of (a) providing a spherical ball having an array of between 8 to 14 pliable nodes projecting axially from the surface of the spherical ball, wherein

the pliable nodes are substantially cylindrical (Figs. 1 and 2; page 8, lines 12-20); and (b) applying localized pressure to a trigger-point using a single pliable node of the spherical ball (page 10, lines 1-3 and 5-10), wherein the pliable nodes are between one-half inch to one inch in both length and diameter (page 9, lines 7-8).

Claims 2, 4, and 5 depend from claim 1 and further specify that the spherical ball and pliable nodes are composed of rubber or plastic (page 8, line 15), that the pliable nodes of the spherical ball are equally spaced apart from each other (Fig. 2; page 8, lines 15-16), and that the pliable nodes of the spherical ball have a flat end (page 8, lines 18-19), respectively.

Claim 13 a second independent claim directed to a trigger-point therapy device that includes a spherical ball (Figs. 1 and 2; page 8, lines 13-14) and an array of between 8 to 14 pliable nodes projecting axially from the surface of the spherical ball (Figs. 1 and 2; page 8, lines 12-20), wherein said pliable nodes are substantially cylindrical and are between one-half inch to one inch in both length and diameter (Page 9, lines 7-8).

Claims 14, 16, 17, and 20 depend from claim 13 and further specify that the spherical ball and the pliable nodes are composed of rubber or plastic (claim 14; page 8, line 15), that the pliable nodes of the spherical ball are equally spaced apart from each other (claim 16; page 8, lines 15-16), and that the pliable nodes of the spherical ball have a flat end (claim 17; page 8, lines 18-19)

Claim 20 depends from claim 13 and further specifies that at least one of the pliable nodes are disposed upon a rigid pin in press-fit arrangement with the spherical ball (Fig 2; page 9, lines 19-21).

Claim 21 is a third independent claim directed to a trigger-point therapy device that includes a spherical ball (Figs. 1 and 2; page 8, lines 13-14) and an array of 10 pliable nodes (Fig. 1; page 8, lines 19-20) projecting axially from the surface of the spherical ball, wherein the pliable nodes are substantially cylindrical (Figs. 1 and 2; page 8, lines 15-17), are evenly spaced apart from each other (page 8, lines 15-16), and are disposed upon a rigid pin in press-fit arrangement with said spherical ball (Fig 2; page 9, lines 19-21), wherein the pliable nodes are between one-half inch to one inch in both length and diameter (Page 9, lines 7-8) .

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection is that of claims 1, 2, 4, 5, 13, 14, 16, 17, 20 and 21 under 35 U.S.C. 103(a) as being unpatentable over Cassidy (U.S. Patent No. 744,718) in view of Mauch (EP Patent No. 0320958) and Sakai (U.S. Patent No. 6,013,042).

ARGUMENT

The Examiner rejected all pending claims under 35 U.S.C. 103(a) as being obvious over Cassidy (U.S. Patent No. 744,718) in view of Mauch (EP Patent No. 0320958) and Sakai (U.S. Patent No. 6,013,042). The Examiner contends that one of ordinary skill in the art would have arrived at the applicant's method and device by substituting the cylindrical flat-end nodes of Mauch for the spherical-shaped nodes of Cassidy's massage device, while using the teachings of Sakai to construct the cylindrical flat-end nodes to be between one half to one inch in length and diameter for the purpose of applying a specific pressure at a specific pressure point.

It is well understood that three basic criteria must be met to establish a prima facie case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Re: claims 1, 2, 4 and 5

Nowhere in the cited references is there a trigger point therapy device or a method of trigger point therapy explicitly taught. Hence, there must be a suggestion or motivation to modify or

combine the teachings of the cited references to arrive at the present invention, and the references must teach or suggest all of the limitations of the applicant's claims.

Claim 1 of the appellant's invention reads:

A method for performing a trigger-point massage, comprising the following steps:

(a) **providing a spherical ball having an array of between 8 to 14 pliable nodes projecting axially from the surface of the spherical ball**, wherein said pliable nodes are substantially cylindrical; and

(b) **applying localized pressure to a trigger-point** using a single pliable node of said spherical ball;

wherein **said pliable nodes are between one-half inch to one inch in both length and diameter**. (Emphasis added)

First, none of the references, alone or in combination, teach or suggest the limitation of "providing a spherical ball having an array of between 8 and 14 pliable nodes." Moreover, the claimed length and diameter of the nodes are not specifically taught by the cited references. Thus, the Examiner contends that both of these limitations either are mere matters of design choice or are somehow suggested by the Sakai reference.

As has been pointed out by the appellant in response to several Office Actions, the number, size, and structure of the nodes are not simply a matter of design choice. As stated in the specification at page 9, lines 1-9:

The restricted number and spacing of nodes are due to roll and pressure requirements discovered by the inventor. The nodes must be spaced apart in such a manner to allow the device to roll while searching for trigger points and still provide adequate pressure to find and release them. If the nodes are spaced too far apart, the device will not roll effectively and if the nodes are spaced too close together, the nodes would not provide adequate or localized pressure at the trigger point. Moreover, the number and size of the nodes dictates the spacing between them and the degree of penetration into the body when pressure is applied. Thus, the preferred size of each node is between one-half inch to one inch in both length L and diameter D as shown in Fig. 1.

Regarding the Sakai reference, it discloses a non-spherical foot and leg massager that has nodes in many different numbers and of many different lengths and diameters. However, neither Sakai, nor any other reference, provides any specific motivation or suggestion to construct “nodes... between one-half inch to one inch in both length and diameter” for all of the nodes of a spherical ball as claimed by the appellant. Thus, one of ordinary skill in the art is not taught to produce a ball with the appellant's claimed number and node-size limitations any more so then any of the other node sizes and numbers disclosed by Sakai.

Second, none of the references teach "applying localized pressure to a trigger-point." Indeed, as stated on page 1 of appellant's specification, the concept of "trigger points" and "trigger point therapy" did not even come into being until the 1960's, which is well after the primary reference Cassidy was published (1903).

Given that the limitations discussed above are not taught or suggested by the combination of references cited by the Examiner, the applicant respectfully submits that claim 1 and all claims depending therefrom cannot be rendered obvious.

Re: claims 13, 14, 16, 17 and 20

Independent claim 13 recites language that (1) specifies 8-14 nodes and that (2) requires all of the nodes to be between one-half inch to one inch in both length and diameter. As stated above, none of the references, alone or in combination, teach or suggest the limitation of “providing a spherical ball having an array of between 8 and 14 pliable nodes.” Moreover, the claimed length and diameter of the nodes are not specifically taught or suggested by the cited references.

Indeed, the Sakai reference discloses a foot and leg massager that has nodes of many different lengths and diameters. However, neither Sakai, nor any other reference, provides any motivation or suggestion to construct “nodes...between one-half inch to one inch in both length and diameter” for all of the nodes of a spherical ball as claimed by the appellant.

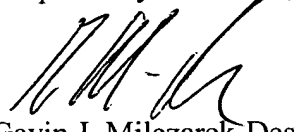
Consequently, claim 13, as well as all claims depending therefrom, also are believed to be new and unobvious in view of the cited art.

Re: claim 21

Claim 21 is an independent claim that incorporates all of the limitations of claims 13, 16, and 20. Accordingly, the arguments made for the device claims above apply to claim 21 as well. Moreover, the Examiner has provided no motivation or suggestion based on the cited art to arrive at the specific combination of a spherical ball having an array of 10 pliable nodes that are evenly spaced apart from each other, that are disposed upon a rigid pin in press-fit arrangement with the spherical ball, and that are between one-half inch to one inch in both length and diameter.

In view of the above, the Appellant respectfully requests that the rejection of all claims on appeal should be reversed in their entirety.

Respectfully submitted,



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CLAIMS APPENDIX

1. A method for performing a trigger-point massage, comprising the following steps:
 - (a) providing a spherical ball having an array of between 8 to 14 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical; and
 - (b) applying localized pressure to a trigger-point using a single pliable node of said spherical ball;
wherein said pliable nodes are between one-half inch to one inch in both length and diameter.
2. The method of claim 1, wherein the spherical ball and pliable nodes are composed of rubber or plastic.
4. The method of claim 1, wherein the pliable nodes of said spherical ball are equally spaced apart from each other.
5. The method of claim 1, wherein the pliable nodes of said spherical ball have a flat end.
13. A trigger-point therapy device, comprising:
 - a spherical ball; and
 - an array of between 8 to 14 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical and are between one-half inch to one inch in both length and diameter.

14. The device of claim 13, wherein the spherical ball and the pliable nodes are composed of rubber or plastic.
16. The device of claim 13, wherein the pliable nodes of said spherical ball are evenly spaced apart from each other.
17. The device of claim 13, wherein the pliable nodes of said spherical ball have a flat end.
20. The device of claim 13, wherein at least one of said pliable nodes are disposed upon a rigid pin in press-fit arrangement with said spherical ball.
21. A trigger-point therapy device, comprising:
- a spherical ball; and
 - an array of 10 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical, are evenly spaced apart from each other, and are disposed upon a rigid pin in press-fit arrangement with said spherical ball, wherein said pliable nodes are between one-half inch to one inch in both length and diameter.

EVIDENCE APPENDIX

Not applicable.

RELATED PROCEEDINGS APPENDIX

Not applicable.